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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

HOLGATE, LLC,

Plaintiff,

vs.

NORTHWESTERN CORPORATION
dba NORTHWESTERN ENERGY, a
Delaware corporation,

Defendant.

CV-23-88-GF-BMM

**PLAINTIFF'S PRELIMINARY
PRETRIAL STATEMENT**

Pursuant to this Court's January 19, 2024, Order (Doc. 12) and Local Rule 16.2(b)(1), Plaintiff Holgate, LLC ("Holgate") submits the following Preliminary Pretrial Statement.

A. Factual Outline of the Case

Holgate is a Montana limited liability company that owns real property in Fergus County, near Denton, Montana. This property contains a residence and

associated outbuildings located at 1252 Benchland Road, and approximately 1,580 acres of crop, grass, and hay ground. NorthWestern Corporation, d/b/a NorthWestern Energy, (“NWE”) is a publicly held natural gas and electric utility that operates in Montana, South Dakota, and Nebraska.

On or about November 30, 2021, a fire started southwest of Denton, Montana, and spread to over 10,000 acres, destroying a portion of the town of Denton, multiple homes, bridges, grain elevators, farms, pastures, fences, and outbuildings. This fire, termed the “West Wind Fire,” was ignited by NWE’s electrical infrastructure and caused significant, if not catastrophic, damage to 6 or more structures on Holgate’s property—including machine shops, garages, historic homestead buildings, well and pump housings—along with on-site water tanks, tools, equipment, shelterbelts, and the water well itself. NWE’s West Wind Fire also burned Holgate’s corrals, approximately 10 miles of fencing, 7,000 bushels of grain storage capacity, and approximately 1,030 acres of land—including roughly 600 acres of cropland, 400 acres of pasture and grassland, and 30 acres of hay ground.

B. Basis for Federal Jurisdiction and for Venue in the Division

The parties do not dispute specific personal jurisdiction in this lawsuit and have waived any such objections. Pursuant to 28 U.S.C. §§ 1441 and 1446, this matter was removed to this Court from the Montana Tenth Judicial District Court, Fergus County. Holgate is a citizen of Montana, while NWE is a Delaware

corporation with its principal place of business in Sioux Falls, South Dakota. Thus, subject matter jurisdiction is based on diversity of citizenship under 28 U.S.C. § 1332(a)(1), because this is a civil action between citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of costs and interest. Pursuant to L.R. 1.2(c)(3), venue is proper in the Great Falls Division of this Court because it encompasses Fergus County where this action was pending prior to NWE filing its notice of removal.

C. Factual Basis of Holgate's Claim

NWE owned, operated, controlled, and maintained its electrical infrastructure in Fergus County and surrounding Montana counties. NWE's infrastructure at issue included overhead electrical wires, transformers, switches, service connections, and other equipment. NWE was solely responsible for maintaining its infrastructure and for maintaining its corridors, which included but was not limited to removing fire fuel sources in proximity to its electrical infrastructure. NWE failed to properly erect, construct, maintain, repair, monitor, operate, or otherwise control its electrical power lines and other infrastructure in a manner which created a high probability of fire. NWE's misconduct actually and proximately caused the West Wind Fire and failed to prevent or otherwise mitigate the spread of said fire.

As a direct and proximate result of NWE's misconduct, the West Wind Fire greatly diminished the value of Holgate's property by severely damaging or

completely destroying much of Holgate's cropland, pasture, grassland, and hay ground, along with Holgate's corrals, fencing, grain storage capacity, machine shops, garages, well and pump housings, other buildings, and the water well itself.

D. Legal Theory Underlying Holgate's Claim

The elements of a common law negligence claim are duty, a breach of that duty, causation and damages. *Barr v. Great Falls Int'l Airport Auth.*, 2005 MT 36, ¶ 41, 326 Mont. 93, 107 P.3d 471. NWE owed a duty of reasonable care to the owners and lessees of real property in Fergus County, to properly erect, construct, maintain, repair, monitor, operate, or otherwise control its electrical power lines and infrastructure. NWE breached its duty by acting in a manner which created a high probability of fire and, in fact, actually and proximately caused the West Wind Fire, failed to prevent or otherwise adequately mitigate the spread, and actually and proximately caused Holgate's damages, mentioned above. *See* § 27-1-701, MCA.

The West Wind Fire was a "forest or range fire," as defined by section 50-63-104(2)(c), MCA, because it burned unimproved real property located outside of an incorporated municipality regardless of whether there were improvements also affected by the fire and regardless of whether the fire also burned property within an incorporated municipality. The West Wind Fire was caused by NWE's "negligent or unintentional act or omission." Therefore, section 50-63-104(1), MCA, permits Holgate to recover all a) reasonable costs for controlling or extinguishing the fire; b)

economic damages; and c) either the diminution of fair market value of its real and personal property caused by the fire, or the actual and tangible restoration costs associated with restoring its damaged real and personal property to their undamaged state, to the extent the actual and tangible costs are reasonable and practical.

E. Computation of Holgate's Damages

Holgate seeks all compensatory and other damages permitted under Montana law, including section 50-63-104, MCA. At this time, Holgate's unrecovered damages are believed to total approximately \$1,174,245.00, as itemized and detailed in a spreadsheet, previously provided to counsel for NWE with supporting documentation. This computation is preliminary and subject to change as investigation of this matter continues. Holgate is also seeking an award of its costs incurred in this litigation.

F. Pendency or Disposition of any Related State or Federal Litigation

This litigation was initially filed in the Montana Tenth Judicial District, Fergus County District Court, and was subsequently removed to this Court. Holgate is not aware of any related state or federal litigation.

G. Proposed Additional Stipulations of Fact and Understanding as to what Law Applies

At this time, Holgate does not propose any additional stipulations of fact beyond the previously filed stipulations. Holgate understands that Montana law

applies to the substantive issues in this case, while federal law applies to procedural and evidentiary issues.

H. Proposed Deadlines Relating to Joinder of Parties or Amendment of the Pleadings

As also noted in the previously filed Discovery Plan, the parties agree that any amendments to the pleadings and any motions to join additional parties shall be filed by June 18, 2024.

I. Controlling Issues of Law Suitable for Pretrial Disposition

Holgate may file a motion for partial summary judgment as to the measure of damages to which it is entitled under section 50-63-104, MCA, and otherwise if it prevails on liability in this case. In particular, based on ¶ 29, p. 6 of its Answer (Doc. 13) to Holdgate's Complaint, NWE appears to take the position that Holgate is entitled to—at most—the diminution in fair market value of the subject property. However, Montana common law and section 50-63-104(1), MCA, entitle Holgate to recover damages in this case which include the following: all a) reasonable costs for controlling or extinguishing the fire; b) economic damages; and c) either the diminution of fair market value of its real and personal property caused by the fire, or the actual and tangible restoration costs associated with restoring its damaged real and personal property to their undamaged state to the extent the actual and tangible costs are reasonable and practical.

Other issues suitable for pretrial disposition may become apparent during discovery.

J. Individuals with Information that may be used to Support Holgate's Claims

1. Kathryn H. Weinheimer
Member of Holgate, LLC
c/o Parker, Heitz & Cosgrove, PLLC
401 N. 31st Street, Suite 1600
PO Box 7212
Billings, MT 59103
(406) 245-9991

Ms. Weinheimer is one of three members of Holgate and is expected to have information regarding the company's operations and property, and regarding the damage caused by the fire described in the complaint.

2. Michael P. Weinheimer
Member of Holgate, LLC
c/o Parker, Heitz & Cosgrove, PLLC
401 N. 31st Street, Suite 1600
PO Box 7212 3
Billings, MT 59103
(406) 245-9991

Mr. Weinheimer is one of three members of Holgate and has extensive personal and professional training, education, and experience regarding agricultural analytics and operations. Mr. Weinheimer is expected to have information regarding the company's operations and property, the damage caused by the fire, and the needed restoration.

3. Karen L. Kaufman
Member of Holgate, LLC
c/o Parker, Heitz & Cosgrove, PLLC
401 N. 31st Street, Suite 1600
PO Box 7212
Billings, MT 59103
(406) 245-9991

Ms. Kaufman is one of three members of Holgate and is expected to have information regarding the company's operations and property, and regarding the damage caused by the fire.

4. Representatives of NWE – yet to be determined
c/o Leo S. Ward
Browning, Kaleczyc, Berry and Hoven, P.C.
800 N. Last Chance Gulch, Suite 101
PO Box 1697
Helena, MT 59624
(406) 443-6820

c/o Thomas H. Davis
Courtney J. Harrison
Stinson, LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106
(816) 842-8600

Representatives of NWE are expected to have knowledge of the cause of the subject fire, and may also have information regarding the damages caused. These representatives are also expected to have knowledge of the company's practices.

5. Mike DeVries
Denton Fire Chief; Board Member of Central Montana Rail
c/o Fred Simpson
Hall & Evans, LLC
Millennium Building, Suite 403
Missoula, MT 59802
(406) 532-2635

It is believed that Mr. DeVries is the Denton Fire Chief and served in this position when the subject fire occurred. Mr. DeVries is expected to have knowledge regarding the cause of and damage from the fire.

6. Sean Edwards
Montana Department of Justice – Fire Prevention and Investigation
Section

It is believed that Mr. Edwards served as Fire Investigator for the subject fire as documented in the State of Montana DOJ/DCI Fire Investigation Report dated December 13, 2021 (report not yet acquired). He is expected to have knowledge of the matters described in that report.

7. Tim Wilhelms

Montana Department of Justice – Fire Prevention and Investigation
Section

It is believed that Mr. Wilhelms served as LE Officer for the subject fire, as documented in the State of Montana DOJ/DCI Fire Investigation Report dated December 13, 2021 (report not yet acquired). He is expected to have knowledge of the matters described in that report.

8. Neal Fehringer

Fehringer Agriculture Consulting
7033 US Highway 312
Billings, MT 59106
(406) 373-5985

Mr. Fehringer is an agronomist who calculated the damages related to and mitigation required for Holgate's cropland, hay ground, pastureland, and shelterbelts which were damaged in the subject fire. Mr. Fehringer has over 40 years of experience in agronomy, he is a member of the American Society of Agronomy, and he provides services including but not limited to agricultural consulting, agricultural contract research, crop inspection, crop loss assessment, crop planning, fertilizer recommendations, irrigation scheduling, soil moisture determination, soil sampling, and soil testing.

9. Tanner Hoversland

Agronomist at Moore Farmers Oil
#7 Second Street NE
Moore, MT 59464
(406) 350-0455

Mr. Hoversland is the primary agronomist at Moore Farmers Oil. He provides agronomic services in Montana across the Judith Basin and provided initial opinions on the subject fire's damage to and the remediation required for Holgate's cropland, pastureland, and hay ground.

10. Spencer Dye
Agronomist at Moore Farmers Oil
#7 Second Street NE
Moore, MT 59464

Mr. Dye worked closely with Tanner Hoversland, observed the damage caused by the fire to Holgate's cropland, and pulled a set of soil samples.

11. Scott Crosby
Appraiser at Crosby Analytics
PO Box 742
Cowley, WY 82420
(307) 548-2079

Mr. Crosby is an appraiser who is expected to provide expertise as to the fair market value of Holgate's property and the damage caused by the fire. Mr. Crosby is a certified General Appraiser in Montana, Wyoming, North Dakota, South Dakota, and Idaho. He also holds an M.B.A. and has over 20 years of farming and ranching experience.

12. Shaun Griffith
Griffith Contracting
PO Box 1110
Lewistown, MT 59457
(406) 366-6794

Griffith Contracting reconstructed the water system on Holgate's property and assisted in the removal of debris from the subject fire. Mr. Griffith is expected to have knowledge of these reconstruction and remediation efforts.

13. Mark Smith
Central Drilling
969 H. Street
Lewistown, MT 59457

Mr. Smith drilled an attempted replacement water well (which was unfortunately dry) and performed plugging and abandonment procedures for the dry hole and the well which was contaminated by the subject fire.

14. Walt Regli
Mountain Electric
7340 Beaver Creek Road
Lewistown, MT 59457
(406) 350-2089

Mr. Regli is an electrician who performed electrical work on the water system, electrical work to rehabilitate the steel shop west of the residence on Holgate's property, and worked to reconnect other Holgate buildings to electricity after the fire.

15. John Eldridge
BuildPro Construction, LLC
479 Lincoln Road West
Helena, MT 59602
(406) 458-7071

BuildPro (and its affiliate ServPro) performed the needed remediation and repairs on the steel shop located west of the house.

16. Brandy Potter
Fergus Farm Mutual
224 West Main Street, Suite 503
Lewistown, MT 59457
(406) 538-9251

Ms. Potter was Holgate's primary point of contact with Fergus Farm Mutual, Holgate's insurance provider at the time of the subject fire.

17. Zack Garcia
Grinnell Mutual Reinsurance Company
PO Box 3654
Great Falls, MT 59403
(406) 590-0316

Mr. Garcia is the Holgate property claims adjuster who initially adjusted the damage caused by the fire.

18. Jeremy Grove

Farmer/grower; grain bin general contractor; Holgate's cropland tenant
3794 Murray Road
Moccasin, MT 59462
(406) 350-2055

Mr. Grove is presently farming as Holgate's cropland tenant and was the cropland tenant at the time of the subject fire. He is expected to have knowledge as to how the fire impacted the crops and cropland. Mr. Grove is also a local builder of grain bins who is expected to have knowledge of how the fire damaged the property's grain storage and the associated remediation costs. Further, Mr. Grove helped to fight the subject fire and is expected to have general knowledge of the damage caused.

19. Vance Todd
Holgate's prior pasture and hay ground tenant
4544 Iowa Bench Road
Denton, MT 59430
(406) 350-1924

Mr. Todd was Holgate's pasture and hay ground tenant for over 15 years. He terminated his pasture and hay ground lease with Holgate as a result of the damage caused by the subject fire. Mr. Todd is expected to have knowledge of the historical pasture and hay operations, and of the damage caused to the property by the fire.

20. Todd Davis and Kellie Davis
Holgate's residential tenants
1252 Benchland Road
Denton, MT 59430
(406) 366-6342

Mr. and Mrs. Davis are Holgate's residential tenants, residing at the premises at 1252 Benchland Road. They are expected to have information regarding the damage to and remediation of Holgate's property. Mr. and Mrs. Davis are also believed to have helped fight the subject fire.

21. Beau Smith
Holgate's new pasture tenant (as of 2024)
10891 Benchland Road
Stanford, MT 59479

Mr. Smith helped fight the subject fire and volunteered to assist with subsequent recovery efforts. He is expected to have knowledge of the damage to Holgate's property caused by the fire.

22. Richard Barber
Holgate's prior cropland tenant
PO Box 885
Denton, MT 59430
(406) 567-2528

Mr. Barber was Holgate's cropland tenant for over 50 years. He is expected to have knowledge of the property's wild hay field, which he continued to harvest at the time of the fire, as well as historic operations on the property.

23. Steve McQuinn
McQuinn Construction
1214 White Street
Lewistown, MT 59457
(406) 538-9260

Mr. McQuinn is a longtime builder in Central Montana and has performed work on the Holgate property. He provided a bid to rebuild Holgate's destroyed buildings to their pre-fire condition.

24. Lea Mitchell
Big Bear Builders
PO Box 37
Stanford, MT 59479
(406) 366-4151

Mr. Mitchell is a builder in Stanford, Montana, who provided a quote to replace Holgate's destroyed buildings.

25. Jay Garoutte
JG Company, LLC
PO Box 841
Lewistown, MT 59457
(406) 538-3212

Mr. Garoutte is the fencing contractor who installed Holgate's new fencing after the damages caused by the subject fire.

26. Any other witnesses not listed in this document but otherwise disclosed or provided by Holgate, NWE, or any additional parties that may later join this matter.
27. Any other witnesses not listed in this document but who are needed for foundational or rebuttal purposes.

K. Insurance Agreement(s)

Holgate has an insurance policy (declarations page was provided to NWE in R.26(a)(1)(A) initial disclosure) through which Holgate has recovered a relatively small portion (roughly 3.3%) of the damages caused to Holgate's property by the West Wind Fire. Holgate does not have any insurance agreement that may cover any remaining damages or resulting judgment in this case.

L. Settlement Discussions and Prospects for Compromise of the Case

The parties have engaged and continue to engage in settlement discussions, before and since this lawsuit was filed. Holgate remains open to resolving this matter outside of Court, either informally between counsel or by mediation which has been scheduled.

M. Special Procedures

Holgate is not aware of any special procedures that should apply to this case.

DATED this 17th day of April, 2024.

/s/ Michael L. Dunphy
Attorney for Plaintiff, Holgate, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Plaintiff's Preliminary Pretrial Statement was served on the following counsel of record via the ECF system:

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DATED this 17th day of April, 2024.

/s/ Michael L. Dunphy
Attorney for Plaintiff, Holgate, LLC